

HOUSE No. 3757

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

March 1, 2007.

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal, entitled, "An Act Regarding the Licensing Requirements For Landlocked Filled Tidelands." Although I do not believe that this legislation involves a transfer or relinquishment of any rights to public trust lands, in order to remove any doubt about the proper legislative procedures, I urge you to treat this bill as if Article XCVII of the Massachusetts Constitution applies to this legislation.

This legislation provides the department of environmental protection with the authority to exempt certain landlocked tidelands from the waterways licensing requirements of chapter 91 of the Massachusetts General Laws. For at least seventeen years, the department of environmental protection exempted, by regulation, landlocked filled tidelands that do not abut the water. This regulation successfully allowed for the development of parcels of land that have no meaningful access to the waterfront, and it avoided an unnecessary strain on the department's staff and resources.

On February 12, 2007, the Supreme Judicial Court ruled that the department of environmental protection did not have legislative authorization for this exemption. As a result, there is great concern that the titles in many parcels of land across the Commonwealth containing existing uses and structures, or those slated for future development are clouded. This legislation will resolve those concerns, and facilitate the development of landlocked

tidelands for the benefit of the people of the Commonwealth by authorizing the department of environmental protection to continue its successful seventeen-year practice.

Accordingly, I urge your prompt and favorable consideration of this bill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval L. Patrick".

DEVAL L. PATRICK,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT REGARDING THE LICENSING REQUIREMENTS FOR LANDLOCKED FILLED TIDELANDS.

1 Whereas, The deferred operation of this act would defeat its
2 purpose, which is to authorize a regulatory exemption for certain
3 landlocked tidal lands from license requirements, therefore it is
4 hereby declared to be an emergency law, necessary for the imme-
5 diate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The general court finds that:

2 (a) In 1990, the department of environmental protection
3 adopted a regulation exempting activities within certain land-
4 locked tidelands from the licensing requirements established by
5 chapter 91 of the General Laws, which landowners relied on for
6 the purchase and improvement of certain landlocked tidelands.

7 (b) The Supreme Judicial Court has held that the department of
8 environmental protection lacks statutory authorization for the
9 exemption.

10 (c) Passage of this act, which authorizes the department of
11 environmental protection to exempt certain landlocked tidelands
12 from the licensing requirements established by chapter 91 of the
13 General Laws, will promote the public interest by maintaining
14 marketable titles and continuing the beneficial redevelopment and
15 economic revitalization of such landlocked tidelands. Further, the
16 redevelopment and revitalization facilitated by this exemption
17 maintains and increases the public's access to the waterfront. Any
18 benefits to private parties from this authorization will be inci-
19 dental to the achievement of these public purposes.

1 SECTION 2. Section 1 of chapter 91 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 inserting after the definition of “Department” the following defin-
4 ition:—

5 “Landlocked tidelands”, filled tidelands, which on January 1,
6 1984 were entirely separated by a public way or interconnected
7 public ways from any flowed tidelands, except the portion of such
8 filled tidelands which are presently located: (a) within 250 feet of
9 the high water mark of flowed tidelands; or (b) within any desig-
10 nated port area under the Massachusetts Coastal Zone Manage-
11 ment program. A public way or ways shall also be defined as
12 landlocked tidelands, except for any portion thereof which is
13 presently within 250 feet of the high water mark of flowed tide-
14 lands.

1 SECTION 3. Section 18 of said chapter 91, as so appearing, is
2 hereby amended by adding the following paragraph:—

3 The department may adopt regulations that exempt landlocked
4 tidelands from licensing. Unless the department adopts regula-
5 tions to the contrary, no license under this chapter shall be
6 required for fill on landlocked tidelands, or for uses or structures
7 within landlocked tidelands.

1 SECTION 4. This act shall apply to all fill, uses and structures
2 existing before, on, or after the effective date of this act. Regula-
3 tions of the department of environmental protection exempting
4 landlocked tidelands from licensing before the effective date of
5 this act are hereby validated and confirmed as if this act had been
6 in effect when such regulations were issued. No fill, use or struc-
7 ture developed pursuant to such regulations shall be subject to
8 challenge on the ground that the department of environmental pro-
9 tection lacked the authority to issue such regulations.